IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8305 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

CHHANALAL RAMJIBHAI NAI - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,

MS DR KACHHAVAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/08/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Labour Court, Kalol passed in Reference (LCK) No.253 of 2000 dtd.17/12/2004 in partly allowing the same, by quashing and setting aside the order passed by the disciplinary authority dtd.23/2/2000 in dismissing the respondent workman from service and directing to pay full wages wages for the period from 23/2/2000 to 31/12/2001.

2.It appears from the record that the respondent workman was serving as a Helper with the petitioner Corporation since last 33 years and his services came to be terminated

w.e.f.23/2/2000 and therefore, he raised an Industrial Dispute which as referred to the Labour Court, Kalol for its adjudication being Reference (LCK) No.253 of 2000. It was contended on behalf of the respondent that he has served with he petitioner Corporation since last 33 years as a Helper and his services came to be terminated without holding any departmental inquiry, without issuing any notice, notice pay and/or retrenchment compensation.

The aforesaid reference was resisted by the petitioner Corporation by submitting that the respondent workman while was on duty at Becharaji Depot, he was absent unauthorizedly for the period from 24/11/1999 to 28/11/1999 and again from 16/12/1999 to 14/1/2000, without getting the leave sanctioned and though he was directed to report for duty, he does not report for duty and therefore, a departmental

inquiry was initiated and chargesheet was issued against him, and after holding the charge proved against the respondent workman, the service of the respondent came to be terminated. The Labour Court has considered the fact that the respondent workman did not submit leave report along with the medical certificate. However, the Labour Court has considered that the only fault of the respondent was that he was not get the leave sanctioned and therefore, the Labour Court, considering the facts and circumstances and considering the fact that the respondent workman has attained the age of superannuation on 31/12/2001, held that the punishment of dismissal is disproportionate and too harsh and therefore, quashed and set aside the order of punishment imposed by the disciplinary authority and considering the fact that the respondent workman has attained the age of superannuation on 31/12/2001 and has retired,

the Labour Court did not pass any order with regard to reinstatement. However, directed the petitioner to pay back wages for the period from 23/2/2000 to 31/12/2001 and other benefits available to him. Being aggrieved by and dissatisfied with the aforesaid judgment and award passed by the Labour Court, Kalol in Reference (LCK) No.253 of 2000 dtd.17/12/2004, the petitioner Corporation has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3.Mr.Hardik Rawal, learned advocate appearing on behalf of the petitioner has submitted that when it is proved that the respondent workman was unauthorizedly absent without getting the leave sanctioned for 34 days, in the present case, the Labour Court was not justified in interfering with the order of punishment passed by the Disciplinary Authority, more particularly considering the past record of the

respondent workman. He has also further submitted that it was the duty of the respondent to get the leave sanctioned and assuming that the Labour Court has exercised the powers under sec.11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”) by holding that the punishment of dismissal is too harsh and it is disproportionate, in that case also, while quashing and setting aside the order of punishment passed by the disciplinary authority, the Labour Court was required to impose any other punishment upon the respondent. But in the present case, no punishment has been imposed by the Labour Court and therefore, it is requested to allow the present petition.

4.On the other hand, Ms.DR Kachhwah, learned advocate appearing on behalf of the respondent workman has submitted that the respondent

workman has already attained the age of superannuation and has retired w.e.f. 31/12/2001 and that he was having 33 years long service career and that if the order of dismissal is not quashed and set aside, then the respondent workman would not get any retirement benefits. She has fairly conceded that the Labour Court was required to impose some other punishment while exercising the powers under Sec.11-A of the ID Act. She has made a statement at bar that the respondent is ready and willing to accept some punishment which may be imposed by this Court. However, she has requested to consider that the retirement benefits be paid to the respondent workman who has rendered 33 years long service.

5.Having heard the learned advocates and considering the material on record, it is not in dispute that the respondent workman was absent for 34 days without getting the leave

sanctioned. However, it has born from the record that the respondent workman did not sent medical certificate along with the leave report which was not granted. Therefore, it cannot be said that the respondent workman has not committed any misconduct. The Labour Court exercised the powers under sec.11-A of the ID Act by holding that the punishment of dismissal is too harsh and disproportionate. The Labour Court has also considered the fact that the respondent workman has retired w.e.f.31/12/2001, however, the Labour Court did not pass any order imposing some punishment upon the respondent workman and has quashed and set aside the order of dismissal and directed the petitioner to pay back wages from 23/12/2000 to 31/12/2001. When the Labour Court has exercised the powers under Sec.11-A of the ID Act, it was incumbent on the part of the Labour Court to impose any other punishment, but in the present case no punishment has been

imposed by the Labour Court upon the respondent workman. In the facts and circumstances, if the petitioner is denied the back wages and other benefits available to have and the judgment and award passed by the Labour Court is modified, quashing and setting aside the order of dismissal, looking to the fact that the respondent workman has retired from 31/12/2001 after rendering 33 years service, the ends of justice would be met so that the respondent workman would get the retiral benefits. The aforesaid indulgence is shown considering the fact that the respondent workman has worked for 33 years with the petitioner Corporation and he is retired w.e.f.31/12/2001.

6.For the aforesaid reasons, the petition succeeds partly. The impugned judgment and order passed by the Labour Court, Kalol passed in Reference (LCK) No.253 of 2000 dtd.17/12/2004 is hereby modified to the extent

that the respondent workman will not be entitled to the back wages and other benefits for the period from 23/2/2000 to 131/12/2001 as directed by the Labour Court, Kalol. The impugned judgment and award of the Labour Court is quashed and set aside accordingly and the order of Disciplinary Authority dtd.23/2/2000 is hereby confirmed and the respondent workman would be entitled to consequential retirement benefits on the basis of the aforesaid order. Rule is made absolute to the aforesaid extent only. However, there will be no order as to costs.

(M.R. SHAH,J.)

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